

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 796 of 1991****For Approval and Signature:****HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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RAMESH G BENDBAR - Appellant**Versus****OWNER SEHUMAL S VIRVANI & 2 - Respondents**

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Appearance :

MR PRANAV G DESAI for Appellant : 1,

MR KM PARIKH for Respondent : 1,

None for Respondent : 2,

MR MA PATEL ADDL PUBLIC PROSECUTOR for Respondent: 3,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**Date : 28/02/2007****ORAL JUDGMENT**

1. Heard the learned counsel for the parties.

2. The appellant Food Inspector, Municipal Corporation Area, Khanderao Market, Vadodara has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code' for short) challenging the order of acquittal dated 25.4.1991 passed by the learned JMFC (Municipal), Vadodara in Criminal Case No. 11053 of 1986 acquitting the respondents original accused No. 1 and 2 of the charge of committing an offence punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act' for short).
3. This Court (Coram: B.J. Shethna, J.) vide order dated 28.10.1991 has granted leave and admitted the appeal.
4. Brief facts leading to filing this appeal deserve to be set out as under.
5. The appellant - original complainant while discharging his duties as Food Inspector under Vadodara Municipal Corporation, visited on 3.12.1986 the business premises of accused Nos. 1 and 2 run in the style and title of "Jyoti Stores", wherein, the selling of Pan-bidi, Pan Masala etc. was going on. The accused No. 2 was present in the shop and was selling the aforesaid edible to the customers. The Food Inspector introduced himself as such to accused No. 2 and notified his intention to collect the catechu

(edible) and collected the sample of catechu (edible) for having it examined by Public Analyst. The notice under Rule 12 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as 'the Rules' for short) in Form VI came to be issued in presence of panch witness. The licence was also examined and the Food Inspector original complainant purchased 600 grams of catechu (edible) from total quantity of 750 grams lying in the shop in the form of small ingots on payment of Rs.72/-. The receipt whereof was obtained from the vendor accused No. 2. The notice under Rule 12 in Form VI is at Ex. 17. The receipt for payment is at Ex.18 and the cash memo is at Ex.19. Sample of catechu (edible) was thereafter divided into three equal portion of 200 grams each and poured into clean, odourless, dry glass bottles. The bottles were sealed in accordance with law in presence of panch witness and panchnama was drawn. The panchnama is at Ex. 20. The complainant thereafter reached to his office and prepared a cover containing one part of the sample food article for sending it to the Public Analyst and also prepared the memorandum in Form VII and specimen copy of seal, which were separately sent to the Public Analyst as required under law. The remaining two parts of the sample food article were sent to the Local Health Authority intimating him that one part of the sample was sent to the Public Analyst for the purpose of analysis. The Public Analyst in his

opinion dated 9.12.1986 opined that the sample did not conform to the standards laid down under the PFA Act and Rules and therefore, the same was declared to be adulterated. Copy of the report was sent to the complainant, who in turn, prepared papers to be put up to Local Health Authority for obtaining requisite sanction for lodging prosecution against the accused Nos. 1 and 2 as accused No. 2 was vendor and accused No. 1 was owner of the business premises, wherefrom the adulterated article was purchased. The Local Health Authority issued sanction for lodging prosecution against the accused Nos. 1, 2 and 3 i.e. owner of the shop, the business premises itself and vendor, who actually was responsible for selling the adulterated food article to the complainant. The sanction was issued on 10.12.1986, which is produced at Ex. 32. On receipt of the sanction, the complaint came to be filed by the complainant against the accused Nos. 1 and 2 i.e. owner of the shop and vendor for offence punishable under Sections 7 and 16 of the Act, which came to be registered as Criminal Case No. 11053 of 1986. As it appears from the record that accused came to be served with notice under Section 13(2) of the PFA Act alongwith copy of the report of the Public Analyst so as to afford them an opportunity to have remaining parts of samples to be examined at Central Food Laboratory after obtaining due permission from the concerned court. The accused were summoned. The plea came to be recorded and trial commenced. The trial

Court after recording evidence of the prosecution put the same to the accused, who denied the case of the prosecution and further statement under Section 313 of the Code was recorded. The trial Court has found that the prosecution proved that the sample food article sold by the accused was adulterated, however, acquitted the accused on the ground that requisite sanction under Section 20 of PFA for lodging the prosecution against the present respondents produced at Ex. 32 was not valid as it was issued without application of mind. The order of acquittal was thus passed mainly on the ground that the sanction at Ex.32 being not valid, the case of the prosecution was vitiated and therefore, the order of acquittal came to be passed. The order of acquittal dated 25.4.1991 is impugned in the present appeal under Section 378 of the Code.

6. Shri Desai, learned counsel appearing for the appellant submitted that the order of acquittal being erroneous and contrary to the evidence on record, the same deserves to be quashed and set aside. Shri Desai has submitted that the factum of adulteration is held to be proved and the acquittal is ordered only on account of some infirmities found by the trial Court in the order sanctioning the prosecution against accused at Ex.32. Shri Desai has submitted that the order of sanction cannot be said to be suffering from any infirmities at all. Shri Desai has submitted that non-mentioning of Section under which the

prosecution is required to be lodged and accused, if found guilty, are punished, in itself cannot be said to be non-application of mind. Shri Desai has submitted that the Apex Court in case of **Suresh H. Rajput & Others Vs. Bhartiben Pravinbhai Soni & Others**, reported (1996) 7 SCC p.199 has held that sanction accorded in such a way cannot be said to be suffering from any infirmities like non-application of mind. Shri Desai has submitted that in view of the observation of the Apex Court in case of Suresh H. Rajput (Supra), the order sanctioning the prosecution against the accused at Ex. 32 cannot be said to be invalid or illegal. Shri Desai submits that as the aspect of adulteration is proved and as the order of sanction at Ex. 32 is not invalid, the order of acquittal be reversed and the accused be punished in accordance with law.

7. Shri Parikh, learned counsel appearing on behalf of respondents original accused submitted that the order of acquittal may not be interfered with by this Court under Section 378 of the Code unless and until it is aptly established by the appellant that it is so perverse as to result into miscarriage of justice. Shri Parikh has also submitted that in the acquittal appeal, the respondent original accused may be permitted to support the order of acquittal on the grounds independent and/or different than the ground on which the trial Court has recorded acquittal if

such grounds are made out from the record and proceedings. Shri Parikh could not effectively support the finding with regard to non-application of mind by the Competent Authority in respect of issuance of order of sanction for prosecuting the accused at Ex. 32. in light of the observation of the Apex Court in case of Suresh H. Rajput (Supra). However, Shri Parikh submitted that the order of acquittal deserves to be confirmed on the ground that sample in question had been collected way back on 3.12.1986 and long time has elapsed. Shri Parikh has submitted that the record and proceedings go to show that complainant and prosecution could not establish due compliance with mandatory provision of Rule 14 as nowhere it has come out that bottles employed for collecting the sample food article were cleaned in due compliance with mandatory provisions of Rule 14. Shri Parikh has submitted that mere statement of the complainant Food Inspector in itself is not sufficient to establish due compliance with mandatory provisions of Rule 14. Shri Parikh has submitted that the panchnama and the testimony of the Food Inspector contain statement that cleaned glass bottles were used for collecting sample food article but in absence of any specific evidence with regard to cleaning of the bottles which were employed for collecting the sample food article and non-examination of the person, who in fact had cleaned the bottles would go to show that complainant and prosecution failed in

establishing due compliance with mandatory provision of Rule 14 of PFA Rules. Shri Parikh submits that in view of the prosecution's failure in leading cogent evidence to show due compliance with mandatory provision of Rule 14, the order of acquittal deserves to be sustained. Shri Parikh has submitted that as it can be seen from the record and proceedings, the entire case is disposed of on the finding of infirmities in the order of sanction. Shri Parikh has submitted that at the relevant time, the judgment of the Apex Court in case of Suresh H. Rajput (Supra) was not there and the order of sanction couched in the fashion in which it is couched in the present case was held to be suffering from infirmities of non-application of mind in view of the decisions of this Court. Shri Parikh has submitted that in view of these over all facts and circumstances, the order of acquittal deserves to be sustained.

8. This Court has perused the records and proceedings and heard the counsel of the parties. The finding of the trial Court in respect of the order of sanction at Ex. 32 cannot be sustained in light of observation of the Apex Court in case of Suresh H. Rajput (Supra). The order sanctioning prosecution at Ex.32 cannot be said to be suffering from any infirmities as it is held by the trial Court. In view of the Apex Court's decision in case of Suresh H. Rajput (supra), the findings of the trial Court in that respect deserve to be reversed and are reversed

accordingly.

9. This Court is mindful of the fact that this being an acquittal appeal, it is always open to the respondent original accused to support the order of acquittal on any other ground available from the material and record independent and different than the ground, on which, trial Court recorded acquittal. In the instant case, on close perusal of the panchnama and the testimony of the Food Inspector - original complainant go to show that sample of catechu (edible) collected on a polythene and it was poured into glass bottles. Now the cleaning of glass bottles in due compliance with mandatory provisions of Rule 14 has not come out in any evidence on record. This Court in case of **M.B. RISALDAR Vs. RADHESHYAM RAMDHAR AGARWAL & ANR.** reported in 1980(2) GLR p.136 has held that when the Food Inspector while leading evidence merely stated that sample food article was placed in clean bottles and did not lead any evidence as to who cleaned or washed the bottles or as to whether the bottles were cleaned in his presence, the compliance with mandatory provisions of Rule 14 was not established. In another judgment in case of **STATE OF GUJARAT VS. BHUPENDRA M. MEHTA,** reported in 1999(1) GLH p.227, this Court has given benefit of doubt when it was not cogently proved by the prosecution that there was due compliance with mandatory provision of Rule 14 of the PFA Rules. In the instant case, as it is stated hereinabove, the

Food Inspector in his deposition has merely stated that he used cleaned dry glass bottles but he has not stated that bottles were cleaned in his presence nor has the prosecution examined the person, who actually cleaned the bottles and therefore, it can well be said that the prosecution could not establish due compliance with provisions of Rule 14 of the PFA Rules.

10.It also deserve to be noted that employment of polythene for collecting the sample food article in first instance itself also, was not warranted in as much as there is no evidence regarding cleanliness of the polythene, which was employed to collect the sample food article in the first instance. The sample article was collected with the help of ladle. There is absolute silence in respect of the cleanliness of ladle, which was employed to collect the sample food article and there is also a doubt about compliance of Rule 14 of the Rules in this using the ladle.

11.In view of this, there is scope for reasonable doubt in case of the prosecution so far as the compliance with mandatory provisions of Rule 14 is concerned. The benefit of doubt, therefore, must go to the accused.

12.In view of the aforesaid discussion, when there is scope for reasonable doubt in respect of due compliance with mandatory provisions of Rule 14, it would not be in the interest of justice to reverse the order of acquittal and fastion the

accused with criminal liability and punish them under Sections 7 and 16 of the Act. It is also important to note that sample food article had been collected way back on 3.12.1986 and after this many years, when there is a reasonable scope for raising doubt in due compliance with mandatory provisions of Rule 14, the order of acquittal cannot be said to have resulted into miscarriage of justice warranting any reversal.

13.In view of this, the order of acquittal dated 25.4.1991 passed by learned JMFC, Vadodara in Criminal Case No. 11053 of 1986 does not call for any interference and the appeal deserves to be dismissed and is dismissed accordingly.

(S.R.BRAHMBHATT, J.)

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